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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,202	04/14/2004	Najem Yaqub	02662	5873
987 7590 10/09/2008 SALTER & MICHAELSON THE HERITAGE BUILDING 321 SOUTH MAIN STREET PROVIDENCE, RI 029037128			EXAMINER KARPINSKI, LUKE E	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			10/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/824,202

Applicant(s)

Yaqub et al.

Examiner

LUKE E. KARPINSKI

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-9,17,21,24,26,29,31-34,36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-9,17,21,24,26,29,31-34,36 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt of supplemental response, amendments, and arguments/remarks filed 10/01/2008 is acknowledged.

#### ***Claims***

Claims 2, 4, 10-16, 18-20, 22, 23, 25, 27, 28, and 35 have been canceled.

Claims 1, 5, and 9 have been amended.

Claims 36 and 37 are new.

Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34, 36, and 37 are currently pending and under consideration.

#### ***Previous Rejections***

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**1. Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34, 36, and 37 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent No. 4,772,427 to Dawson et al. in view of US Patent No. 6,440,923 to Lyle et al.

***Applicant Claims***

Applicant claims a composition comprising an anionic surfactant, an amphoteric surfactant, a non-ionic gelling agent, and a post-foaming agent, an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater, the rigidity of said composition remaining unchanged for 4 minutes after addition of said post-foaming agent, specific compounds for said non-ionic gelling agent, including laureth-4, a percentage of said non-ionic gelling agent present, and said composition being filled into a package from which the gel is dispensed, wherein the composition is filled into said package prior to the formation of said gel.

Applicant further claims said package as an aerosol can, a percentage of surfactants present, specific compounds and percentages for said post-foaming agent, a specific anionic surfactant, said anionic surfactant as 50% or greater of total surfactant percentage, a specific amphoteric surfactant, and a method of manufacture.

***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

Dawson et al. teach a post-foaming gel comprising an anionic and an amphoteric surfactant and a post-foaming agent, wherein the anionic surfactant to non-ionic gelling agent (ethoxylated fatty alcohol) ratio is 4:1 (abstract), said non-ionic gelling agent gelling agent present at 1-24%, which reads on 0.01-8% (col. 4, lines 49-54 and col. 10 examples 9 and 10 [Brij 30]), and the rigidity remaining unchanged for up to 24 hours, as well as said composition filled into packages prior to gel formation (col. 8, line 53 to col. 9, line 9) as claimed in claims 1 and 9. It is noted that ethoxylated fatty alcohol (4

lauryl alcohol) (col. 4, lines 49-65) reads non-ionic gelling agent (laureth-4), as 4-lauryl alcohol, laureth-4, and brij-30 are all synonyms.

Dawson et al. further teach lauryl alcohol (col. 4, lines 49-65) as claimed in claims 3 and 9, an aerosol can (col. 3, lines 29-31 and col. 9, lines 8-19), as claimed in claim 5, surfactants present from 3-23% and 4-26%, which reads on 0.01-30%, as claimed in claims 6 and 17, said foaming agent as an aliphatic hydrocarbon having 4-5 carbon atoms (abstract), as claimed in claims 7, 21, and 24, 5-20% foaming agent, which reads on 0.01-14%, as claimed in claims 8, 26, 29, and 30, sodium lauryl ether sulfate (col. 4, lines 22-30), as pertaining to claims 31 and 32, iso-pentane as a post foaming agent (col. 5, lines 20-26), as claimed in claims 33 and 34, and a method of manufacturing said compositions comprising combining a liquid base with a foaming agent (col. 3, lines 57-68 and col. 8, line 41 to col. 9, line 19), as pertaining to claim 9)

***Ascertainment of the Difference between Scope the Prior Art and the Claims  
(MPEP §2141.012)***

Dawson et al. do not teach an amphoteric surfactant, specifically cocamidopropyl betaine, as claimed in claims 1 and 37. This deficiency in Dawson et al. is cured by Lyle et al. Lyle et al. teach self-foaming compositions comprising anionic and amphoteric surfactants, including cocamidopropyl betaine, (col. 8, examples 1-3).

Further, Dawson et al. do not teach said anionic surfactant present at 50% or greater of the total amount of surfactant in said compositions as claimed in claim 36. This deficiency is cured by Lyle et al. Lyle et al. teach formulations wherein the anionic

surfactant is present at 50% or greater of the total percentage of surfactant in said compositions (col. 8, examples 1-2).

***Finding of Prima Facie Obviousness Rational and Motivation***  
***(MPEP §2142-2143)***

Regarding claims 1 and 37, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with an amphoteric surfactant, specifically cocamidopropyl betaine as taught by Lyle et al. in order to produce the invention of instant claims 1 and 37.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach similar foaming compositions which utilize amphoteric surfactants as well as anionic surfactants. Therefore it would have been obvious to utilize the cocamidopropyl betaine of Lyle et al., with the formulations of Dawson et al. in order to utilize a different surfactant system which is known for similar compositions.

Regarding claim 36, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with anionic surfactant present at 50% or greater of the total amount of surfactant as taught by Lyle et al. in order to produce the invention of instant claim 36.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach similar foaming compositions which utilize amphoteric surfactants and anionic surfactants at percentages which read on the claimed anionic percentage. Therefore it would have been obvious to utilize the surfactant system of Lyle et al., with

the formulations of Dawson et al. in order to utilize a different surfactant system which is known for similar compositions.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**2. Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34, 36, and 37 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent No. 6,440,923 to Lyle et al. in view of US Patent No. 4,772,427 to Dawson et al.

#### ***Applicant Claims***

Applicant claims a composition comprising an anionic surfactant, an amphoteric surfactant, a non-ionic gelling agent, and a post-foaming agent, an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater, the rigidity of said composition remaining unchanged for 4 minutes after addition of said post-foaming agent, specific compounds for said non-ionic gelling agent, including laureth-4, a percentage of said non-ionic gelling agent present, and said composition being filled into a package from which the gel is dispensed, wherein the composition is filled into said package prior to the formation of said gel.



Applicant further claims said package as an aerosol can, a percentage of surfactants present, specific compounds and percentages for said post-foaming agent, a specific anionic surfactant, said anionic surfactant as 50% or greater of total surfactant percentage, a specific amphoteric surfactant, and a method of manufacture.

***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

Lyle et al. teach a self foaming cleansing composition comprising an anionic surfactant, an amphoteric surfactant, a post foaming agent (abstract), a non-ionic gelling agent present at 0.01-8% (lauryl alcohol, which is a synonym for laureth-4) (col. 4, lines 18-45 and col. 5, lines 7-10), and that said composition is filled into a container prior to gel formation (col. 3, lines 6-15) as claimed in claim 1.

Lyle et al. further teach a surfactant portion present from 0.01-30% (col. 7, lines 9-10) as claimed in claims 6 and 17, a aliphatic hydrocarbon foaming agent having 4-6 carbon atoms (col. 3, lines 49-55), as claimed in claims 7, 21, and 24, said foaming agent present from 0.01-14% (col. 3, lines 49-55), as claimed in claims 8, 26, and 29, said foaming agent as is pentane (col. 3, lines 49-55), as pertaining to claims 33 and 34, said anionic surfactant as sodium lauryl ether sulfate, hereafter referred to as SLS (col. 5, lines 26-67 and col. 8, lines 66-67), as pertaining to claims 31 and 32, said anionic surfactant present at 50% or greater of the total surfactant percentage (col. 8, examples 1-2), as claimed in claim 36, said amphoteric surfactant as cocamidopropyl betaine (col. 8, examples 1-3), as claimed in claim 37, and methods of manufacturing said compositions, including adding said foaming agent to said compositions and dispensing

said complete compositions into containers prior to gelling (col. 2, lines 28-67), as pertaining to claim 9.

Lyle et al. also teaches problems associated with the manufacture of said compositions and solutions to said problems (col. 1, line 1 to col. 3, line 23).

The teachings of Dawson et al. are delineated above and incorporated herein.

***Ascertainment of the Difference between Scope the Prior Art and the Claims  
(MPEP §2141.012)***

Lyle et al. do not teach an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater as claimed in claims 1 and 9. This deficiency in Lyle et al. is cured by Dawson et al. Dawson et al. teach a 4:1 ratio of said components (abstract).

Further, Lyle et al. do not teach said composition rigidity remaining unchanged for at least 4 minutes after the addition of the foaming agent as claimed in claims 1 and 9. This deficiency is cured by Dawson et al. Dawson et al. teach that formulations such as these may be optimized such that the gel formation does not occur for up to 24 hours (col. 8, line 64 to col. 9, lines 7).

Further, Lyle et al. do not teach an aerosol can as claimed in claim 5. This deficiency is cured by Dawson et al. Dawson et al. teach similar formulations packaged in aerosol cans (col. 3, lines 29-31 and col. 9, lines 8-19).

***Finding of Prima Facie Obviousness Rational and Motivation***

**(MPEP §2142-2143)**

Regarding claims 1 and 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Lyle et al. with an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater as taught by Dawson et al. in order to produce the invention of instant claims 1 and 9.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. and Dawson et al. both teach to similar compositions; Lyle et al. teach the utilization and percentage ranges of both anionic surfactants and non-ionic gelling agents and Dawson et al. teach specific ratios of said components. Therefore it would have been obvious to utilize the component ratio of Dawson et al, with the formulations of Lyle et al. in order to utilize known ratios for said components.

Regarding claims 1 and 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Lyle et al., with an unchanged rigidity for at least 4 minutes after the addition of the foaming agent as taught by Dawson et al. in order to produce the invention of instant claims 1 and 9.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach formation of a gel prior to said composition being dispensed into containers can cause problems and Dawson et al. teach that said formulations can be modified so that the gel forms anytime from immediately after addition of the foaming agent to 24 hours after said addition. Therefore it would have been obvious to utilize the

modification teachings of Dawson et al., with the formulations of Lyle et al. in order to prevent gelling to occur until said compositions had been dispensed into containers.

Regarding claim 5, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to dispense the formulations of Lyle et al. into aerosol cans as taught by Dawson et al. in order to produce the invention of instant claim 5.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Lyle et al. teach similar compositions and Dawson et al. teach that said compositions can be stored in many different containers, including aerosol containers. Therefore it would have been obvious to utilize the aerosol containers of Dawson et al, with the formulations of Lyle et al. in order to utilize a container which is known to work well with said formulations.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### ***Double Patenting***

Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 and 11-34 of copending Application No. 10/824,203. Although the conflicting

claims are not identical, they are not patentably distinct from each other because each application teaches the same methods of making the same compositions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Ascertainment of the Difference between Scope the Prior Art and the Claims  
(MPEP §2141.012)***

Application '203 does not recite claims drawn to the compositions of the instant application, however, application '203 does teach methods of making said compositions so the compositions themselves are disclosed.

The instant application does not recite said compositions having a stability for at least 12 months at a specified temperature, however, both applications teach the same compositions and one cannot separate a compositions and its properties, therefore the compositions of the instant application would necessarily remain stable for 12 months.

***Finding of Prima Facie Obviousness Rational and Motivation  
(MPEP §2142-2143)***

The differences in the instant application and application '203 are in language only, the compositions and the methods of both applications are the same and either application would be seen as obvious over the other to one of ordinary skill in the art.

***Conclusion***

Claims 2, 4, 10-16, 18-20, 22, 23, 25, 27, 28, and 35 have been canceled.

Claims 1, 5, and 9 have been amended.

Claims 36 and 37 are new.

Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34, 36, and 37 are rejected.

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE E. KARPINSKI whose telephone number is (571)270-3501. The examiner can normally be reached on Monday Friday 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LEK

/Mina Haghighatian/  
Primary Examiner, Art Unit 1616

